IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 23083 of 2004

Between:

M/s. Kalaimagal Transports, rep by its Managing Partner P.Viswanatan, S/o. Rangaswamy, aged 43 years, 561, Sathy Road, Gandhipuram, Coimbatore, Tamilnadu.

..... PETITIONER

AND

1 The Secretary Regional Transport Authority, Kadapa.
2 The Motor Vehicle Inspector, Rajampet, Kadapa District.

.....RESPONDENS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in seizing the petitioner's vehicle bearing registration No. TN 38/F 5335 under Check Report No. 1192542, dated 2-12-2004 as illegal and arbitrary and consequently direct the respondents herein to release the vehicle bearing registration No. TN 38/F 5335 seized under Check Report No. 1192542, dt. 2-12-2004 in favour of the petitioner and pass such other or further order or orders

Counsel for the Petitioner: MR.ARIFULLA

Counsel for the Respondents: GP FOR TRANSPORT

The Court at the admission stage made the following :

The Hon’ble Sri Justice

K.C. Bhanu

W.P. No. 23083 of 2004

O R D E R:

Challenging the action of the 2nd respondent in seizing the petitioner's vehicle bearing Registration No.TN 38/F 5335 under check report No.1192542 dated 2.12.2004, the present writ petition is filed.

The contention of the petitioner herein is that the vehicle is alleged to have been plied on a contract carriage picking up passengers at Kodur but the fact is that when the vehicle reached Tirupathi some of the passengers insisted the driver to go to Kodur to see some of the relatives of the tourist party and hence the seizure of the vehicle is illegal and arbitrary.

Learned counsel for the petitioner contended that the issue whether the petitioner is liable to pay tax or not is to be decided in the enquiry and therefore for that reason seizing the vehicle itself is illegal and that for release of the vehicle the petitioner has made an application before the 1st respondent but no action has been taken. Hence the present petition.

On the other hand, learned Government Pleader for Transport appearing for the respondents contended that the petitioner has to pay an amount of Rs.50,000/- towards tax and the petitioner was unauthorisedly plying the vehicle in the State of Andhra Pradesh and for that purpose a show-cause notice was given and therefore without determining the liability of the petitioner's payment of tax, a direction for interim custody of the vehicle cannot be given.

The facts are not in dispute. For violation of certain provisions of the Motor Vehicles Act, the vehicle of the petitioner has

been seized. The petitioner seems to have filed an application before the 2nd respondent for return of the vehicle but no orders have been passed.

Whether the petitioner is liable to pay any tax or not and whether the petitioner is plying the vehicle without any permit are to be decided by the competent authority after giving show-cause notice calling for the explanation of the petitioner. As a matter of fact, learned Government Pleader brought to the notice of this court that a show-cause notice has already been issued on 8.12.2004 itself. Therefore, it is for the writ petitioner to give the explanation and after considering the same, appropriate decision has to be taken by the 2nd respondent. But, in the meanwhile it is not desirable to keep the vehicle idle exposing it to sun and rain causing damage to the vehicle. At the same time, the interest of the respondents should also be protected while granting interim custody of the vehicle to the petitioner. Even according to the learned Government Pleader, an amount of Rs.50,000/- is due towards tax and a further amount of Rs.50,000/- is due towards penalty and compounding fee. Therefore, the interim custody of the vehicle can be given to the petitioner with some conditions.

The writ petition is accordingly disposed of directing the 1st respondent to release interim custody of the vehicle bearing registration No.TN 38/F 5335 to the petitioner on petitioner's depositing a sum of Rs.50,000/- and also furnishing bank guarantee for another sum of Rs.50,000/- on further conditions that (a) the petitioner shall produce the vehicle as and when required by the concerned authority and (b) the petitioner shall not alienate or transfer the vehicle to the 3rd parties.

K.C. Bhanu, J.

Date: 13—12—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary Regional Transport Authority, Kadapa.
2 The Motor Vehicle Inspector, Rajampet, Kadapa District.

3. 2CCs to Government Pleader for Transport, High Court Buildings, Hyderabad. (OUT).

2.2CD copies.